

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2007

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

W.P.No.24533 of 2007
& M.P.No.1 of 2007

K.Natarajan

... Petitioner

vs.

The District Collector,
Kancheepuram District.
Kancheepuram.

... Respondent

Writ petition is filed under Article 226 of the Constitution of India for issuance of a writ of Mandamus directing the respondent herein to grant permission to the petitioner to remove 3000 lorry loads of gravel sand from the S.No.343, Irungattukottai Village, Sriperumbudur Taluk, Kancheepuram District for which the petitioner has paid a sum of Rs.2,70,000/-.

For Petitioner : Mr.K.R.Krishnan

For Respondents : Mr.A.Arumugam, AGP.,

O R D E R

The writ petition is for a Mandamus directing the respondent to grant permission to the petitioner to remove 3000 lorry loads of gravel sand from the S.No.343, Irungattukottai Village, Sriperumbudur Taluk, Kancheepuram District, for which the petitioner has paid a sum of Rs.2,70,000/-.

2. On the application made by the petitioner dated 11.03.2005, the District Collector, Kancheepuram District, by an order dated 25.05.2007, granted permission to him under Rule 12 of the Tamil Nadu Minor Mineral Concession Rules, 1959 to remove 3000 lorry loads of gravel in S.No.343 Irungattukottai Village, Sriperumbudur Taluk, Kancheepuram District for a period of one month from 25.05.2007 to 24.06.2007. The petitioner, to fulfill the conditions imposed by the respondent, paid a sum of Rs.2,70,000/- on 28.05.2007 for the removal of 3000 lorry loads from the above said area. It is the case of the petitioner that though he was granted permission to remove 3000 lorry loads of gravel, the transport

permit obtained for 800 lorry loads is still lying with the petitioner. Having paid the seigniorage fee of Rs.2,70,000/- for the removal of 800 lorry loads of gravel, the petitioners made a request for the issuance of dispatch slip for the balance 2200 lorry loads of gravel. The authorities informed the petitioner that the time granted to the petitioner to quarry Savudu has already expired. Therefore, the petitioner submitted a representation dated 02.07.2007 requesting the respondent to grant permission to remove 3000 lorry loads of gravel from the abovesaid area.

3. Referring to Rule 19 of the Minor Mineral Concession Rules, 1959, learned counsel for the petitioner submitted that the minimum period for granting quarrying lease for the owner shall not be less than one year and the maximum period shall not exceed five years. In respect of minerals, the minimum period for granting quarrying lease for stone shall not be less than one year and therefore, no prejudice would be caused to the respondent in not permitting the petitioner to remove the remaining quantity of savudu from the lease area. He further submitted that the entire seigniorage fee has already been paid and in the absence of any prejudice, the petitioner may be permitted to continue the quarrying operation until he achieves the maximum quantity of the savudu as per the permit granted to him dated 25.05.2007. He further submitted that the representation dated 2.07.2007 may be treated as a fresh application and permission may be granted to quarry.

4. Considering the limited scope in the writ petition as to whether the petitioner is entitled to the mandamus or not, Mr.A.Arumugam, learned Additional Government Pleader was put on notice and heard.

5. On written instructions, learned counsel for the respondent submitted that the petitioner was granted permission to remove 3000 lorry loads of gravel from the Public Works Department, tank poramboke in S.No.343 of Irunkattukottai Village, Sriperumbudur Taluk, for the period of one month from 25.5.2007 to 24.06.2007. He further submitted that the contention of the petitioner that he was granted permission to lift only 800 lorry loads of Savudu and bulk permit and dispatch slips were issued only for 800 loads is incorrect. As per the written instructions, the petitioner was permitted to transport only 2200 lorry loads from 28.05.2007 to 18.06.2007. Referring to condition No.9 i.e. permit under rule 12 of the Tamil Nadu Minor Mineral Concession Rules, 1959, of the proceedings of the respondent dated 25.05.2007, learned counsel for the respondent submitted that there is no provision for extension of the lease period after expiry of lease period and the petitioner, having agreed to comply with the conditions, has failed to remove and transport the mineral during the permitted period. He further submitted that Rule 19 of the Tamil Nadu Minor Mineral Concession Rules does not apply to the facts of the present case where the permit has been granted under Rule 12 of the said Rules, which does not speak of extension period after the expiry of the permitted period.

6. Rule 12 of the Minor Mineral Concession Rules, 1959, speaks about removal of sand etc from lands and tanks incharge of some departments and Rule 12(2) reads as follows:

"The public may be allowed to quarry free of charge for bonafide domestic or agricultural purposes sand, earth or silt from the beds of tanks under the control of the Public Works Department or Revenue Department which are notified by the Collector under this Rule without obtaining permits for quarrying provided that the dwelling place, or agricultural land of the person concerned and the quarrying:

Provided that the dwelling place, or agricultural land of the person concerned and the quarrying place shall be in the same revenue village or in the adjoining revenue village. Quarrying for other than bonafide domestic or agricultural purposes shall be subject to the previous permission being obtained from the District Collector concerned and to the payment of seigniorage fee for the quantity of the mineral sought to be removed at the rates specified from time to time in Appendix II to these Rules. Any removal of mineral from these lands shall be subject to the conditions contained in the abovesaid Rules. "

7. On a perusal of the above provision and the quarrying permit dated 25.05.2007, it is evident that the application of the petitioner had been considered only in accordance with Rule 12 of the Tamil Nadu Minor Mineral Concession Rules, 1959 and accordingly permission has been granted to quarry 3000 lorry loads of gravel for the period of one month from 25.5.2007 to 24.06.2007. As per Clause 6 of the permit, the petitioner has to pay the entire seigniorage fee for the quantity of the mineral. For any reason, if the petitioner is not in a position to remove and transport the mineral within the specified period, the proportionate seigniorage fee collected for the entire quantity of mineral shall not be refunded, and that the lease period shall not be extended under any circumstance.

8. Having subjected himself with an open mind to the terms and conditions of the contract, which imposes a stringent condition of forfeiture of the seigniorage fee, it is not open to the petitioner to contend that there is no provision in the Tamil Nadu Minor Mineral Concession Rules for such forfeiture. Further, if the petitioner could not remove and transport the mineral within the stipulated period as per condition 9 of the lease, the period of lease cannot be extended in any circumstance. Unless a statutory duty is cast upon the respondents and there is a failure to perform such duty, writ of mandamus cannot be issued. The parties are bound by the terms of the permit conditions and this Court under Article 226 of the Constitution of India, shall not exercise its jurisdiction to extend the period of contract or compel the respondent to act contrary to the conditions. Under such circumstances,

no mandamus can be issued to the respondents to extend the period and the relief prayed for in this writ petition cannot be granted. Hence, the writ petition is dismissed. No costs. Consequently, M.P.No.1 of 2007 is also dismissed.

raa

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The District Collector,
Kancheepuram District.
Kancheepuram.

+1 cc to Mr.K.R.Krishnan, Advocate Sr.No.46106.

+1 cc to The Government Pleader Sr.No.45997.

KA(CO)
dcp/18.8

W.P.No.24533 of 2007